

# **EXHIBIT 1**

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

C.A. No. 4307-CS

IN RE: BANK OF AMERICA  
CORPORATION STOCKHOLDER  
DERIVATIVE LITIGATION,

\*\*\* CONFIDENTIAL \*\*\*

VIDEOTAPED DEPOSITION OF KENNETH D. LEWIS

Taken on Behalf of the Plaintiffs

DATE TAKEN: MARCH 6, 2012  
TIME: 8:59 a.m. - 6:26 p.m.  
PLACE: LA PLAYA BEACH & GOLF RESORT  
9891 GULF SHORE DRIVE  
NAPLES, FLORIDA 34108

Examination of the witness taken before:

Joan L. Pitt  
Registered Merit Reporter  
Certified Realtime Reporter  
Florida Professional Reporter  
HUDSON REPORTING & VIDEO 1-800-310-1769

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<p>1 Q. Was the best information you had at the time of</p> <p>2 the stockholders meeting the information that was</p> <p>3 included in the proxy statement?</p> <p>4 A. It was the -- I didn't -- I would not have</p> <p>5 known at that point whether it was any better than the</p> <p>6 information that I was going to receive from the profit</p> <p>7 plan.</p> <p>8 Q. That's your testimony?</p> <p>9 A. Yeah. I mean, this is a profit plan, not --</p> <p>10 not an estimate of earnings.</p> <p>11 Q. Well, when Mr. Price presented that profit plan</p> <p>12 to the board, didn't he --</p> <p>13 A. Yeah, at that point he called it a forecast,</p> <p>14 yes.</p> <p>15 Q. And he compared it with the dilution-accretion</p> <p>16 numbers that were used at the time of the approval,</p> <p>17 right?</p> <p>18 A. Right.</p> <p>19 Q. So where's the disconnect? What am I missing</p> <p>20 about the analogy?</p> <p>21 A. Well, because -- well, because profit plans,</p> <p>22 you can call them forecasts, but they can be -- they can</p> <p>23 be very different.</p> <p>24 Q. Okay. You knew then -- fair enough. You knew</p> <p>25 that the profit plan that you had in your -- as of the</p>	<p>1 stockholder asking about dilution?</p> <p>2 A. Because that was what I recalled -- that's what</p> <p>3 I recalled about the -- as much as I could say about the</p> <p>4 presentation, and that was the only thing that we had</p> <p>5 said publicly.</p> <p>6 Q. Okay. And do you think that transcript's</p> <p>7 accurate?</p> <p>8 A. I don't have any reason to believe that it's</p> <p>9 not.</p> <p>10 MR. KRINER: Can we cue up? We'll mark this as</p> <p>11 an exhibit, which is the DVD produced. 38.</p> <p>12 (Lewis Exhibit No. 38 was marked for</p> <p>13 identification.)</p> <p>14 * * * * *</p> <p>15 (The following excerpt of the DVD was played.)</p> <p>16 CHAIRMAN LEWIS: And, finally, is there any</p> <p>17 discussion on Item 4, approval and adjournment of</p> <p>18 the special meeting?</p> <p>19 JOHN BURKE: Excuse me, Mr. Lewis.</p> <p>20 CHAIRMAN LEWIS: I'm going to let you speak.</p> <p>21 JOHN BURKE: I'm still back on 3. You didn't</p> <p>22 respond to the lady's comment. This will dilute our</p> <p>23 shares, will it not, yes or no, not in the future</p> <p>24 some day, but this afternoon?</p> <p>25 CHAIRMAN LEWIS: We have said that the -- as I</p>
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<p>1 time of the stockholder meeting called for far less than</p> <p>2 \$4 billion in income from Merrill for 2009, correct?</p> <p>3 A. I had a -- I either had a profit plan that was</p> <p>4 the first pass or I had the second one. I don't recall</p> <p>5 which one. If I had the second one, then I would have</p> <p>6 had a -- had a profit plan that was less than -- than</p> <p>7 the estimate of the analysts.</p> <p>8 Q. And the first one also, correct? You said you</p> <p>9 had a profit plan -- I'm sorry.</p> <p>10 MR. KRINER: Can you read back the answer?</p> <p>11 (The answer was read by the reporter.)</p> <p>12 Q. The first cut was even less than that, wasn't</p> <p>13 it?</p> <p>14 A. Yeah, but again, that was not credible, because</p> <p>15 it was the first pass.</p> <p>16 Q. But it was -- that information that was in your</p> <p>17 possession was -- was significantly below \$4 billion,</p> <p>18 correct?</p> <p>19 A. But not credible at that point.</p> <p>20 Q. Okay. But fair enough that number was far</p> <p>21 below \$4 billion?</p> <p>22 A. That number was far below \$4 billion, but not</p> <p>23 credible at that point.</p> <p>24 Q. So why did you repeat the information from the</p> <p>25 proxy statement and from the analyst conference to the</p>	<p>1 recall in the presentation, that we will have</p> <p>2 dilution in the first year, breakeven in the second,</p> <p>3 and then accretion in the third.</p> <p>4 JOHN BURKE: Oh, good, okay. I'm going to let</p> <p>5 you put a little skin in the game, if you will.</p> <p>6 We'll have dilution the first year. If we don't</p> <p>7 have breakeven in the second year, will you and the</p> <p>8 board of directors out of your own personal ownings,</p> <p>9 including your homes and your investments, will you</p> <p>10 compensate the stockholders for that lack of</p> <p>11 accretion?</p> <p>12 CHAIRMAN LEWIS: We will --</p> <p>13 JOHN BURKE: I didn't think so.</p> <p>14 CHAIRMAN LEWIS: We will deal with the issues</p> <p>15 when --</p> <p>16 JOHN BURKE: I didn't think you would. We have</p> <p>17 skin in the game. You all don't.</p> <p>18 CHAIRMAN LEWIS: Do you think we're not</p> <p>19 stockholders? My God.</p> <p>20 MR. BURKE: Yeah, you're stockholders. But</p> <p>21 your stock, as I recall, was at least in part as</p> <p>22 part of your compensation, which is quite healthy.</p> <p>23 CHAIRMAN LEWIS: It is part of my compensation.</p> <p>24 You're correct.</p> <p>25 JOHN BURKE: Yes, it is. So we're paying -- we</p>

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